

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

JEFFREY G. GERRITSON

O'Brien County, Iowa

ADMINISTRATIVE ORDER

NO. 2012-SW- 04

TO: Jeffrey Gerritson
5187 310th St.
Sheldon, IA 51201

I. SUMMARY

This administrative order is entered into between the Iowa Department of Natural Resources (DNR) and Jeffrey Gerritson for the purpose of resolving violations related to the storage and handling of discarded appliances.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Bryon Whiting, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand, Suite E17
Spencer, IA 51301-2200
Phone: 712-262-4117

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E 9th St.
Des Moines, IA 50319
Phone: 515-281-8889

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Filing of appeal

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative order is issued pursuant to the provisions of Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Jeffrey Gerritson solely owns a property at 5187 310th Street in Sheldon, Iowa. Discarded appliances and discarded waste tires have been accumulated at the property. Mr. Gerritson is not and never has been a licensed appliance demanufacturer.
2. On March 14, 2005, DNR received a complaint alleging Jeffrey Gerritson was hauling a load of demanufactured water heaters to Sioux City Compressed Steel, Inc.
3. On January 18, 2007, DNR investigated this complaint and found that Mr. Gerritson was storing white goods at the property of Don Caauwe.
4. On February 13, 2007, DNR sent a certified letter to Mr. Caauwe and Mr. Gerritson advising them of the applicable law and their responsibility to ensure that all appliances are removed from the property and properly disposed or recycled by no later than July 1, 2007. The letter also required Mr. Gerritson and Mr. Caauwe to submit receipts verifying proper cleanup of appliances from the site.
5. On June 19, 2007, DNR received a phone call from Mr. Gerritson requesting an extension on the July 1st cleanup deadline. Mr. Gerritson also gave to DNR the name of the licensed demanufacturers used to properly discard appliances at Mr. Caauwe's property. An extension was granted, but DNR never received any receipts.
6. On July 6, 2011, DNR received a complaint alleging Mr. Gerritson was accumulating appliances at his home located at 5187 310 St. in rural Sheldon, IA.
7. On July 15, 2011, DNR investigated the complaint and observed discarded and dismantled appliances, waste tires and miscellaneous solid waste on Mr. Gerritson's property. Photographs were taken.
8. On July 18, 2011, DNR issued a Notice of Violation to Mr. Gerritson for the illegal open dumping of appliances. Mr. Gerritson was notified that this matter was being referred for the initiation of enforcement action.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. Iowa Code section 455D.6(6) requires the Director of the DNR to develop a strategy and recommend to the Commission the adoption of rules necessary to implement a strategy for white goods.

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2. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The above-stated facts disclose violations of these requirements.

3. In order to carry out the purposes of Iowa Code sections 455B.304 and 455D.6(6), the Commission has adopted IAC Chapter 567-118 "Discarded Appliance Demanufacturing". The requirements applicable to a permit holder are set forth in IAC Chapter 567-118.

4. Rule 118.2(2) provides that a person must obtain an appliance demanufacturing permit from the DNR before conducting any demanufacturing activities. The above facts demonstrate non-compliance with this provision. The above-stated facts disclose violations of this requirement.

5. Pursuant to 567 IAC 118.4(1), any person collecting and storing discarded appliances must store the appliances so as to prevent electrical capacitors, refrigerant lines and compressors, and mercury-containing components from being damaged and allowing a release into the environment. The above-stated facts disclose violations of this requirement.

6. Pursuant to 567 IAC 118.4(2), no method of handling discarded appliances may be used which in any way damages, cuts or breaks refrigerant lines or crushes compressors, capacitors, or mercury-containing components that may cause a release of refrigerant, PCBs or mercury into the environment. The above-stated facts disclose violations of this requirement.

V. ORDER

THEREFORE, the DNR hereby orders Jeffrey Gerritson to do the following:

1. Jeffrey Gerritson shall not accept, pick-up or otherwise acquire any discarded appliances unless he has first obtained an appliance demanufacturing permit from the DNR.

2. By March 1, 2012 Jeffrey Gerritson shall remove all discarded appliances and waste tires from his property located at 5187 310th Street, Sheldon, Iowa. All discarded appliances shall be delivered to a permitted appliance demanufacturer or permitted sanitary disposal project and all solid waste shall be properly disposed of. Receipts showing proper disposal shall be delivered to the DNR by March 15, 2012.

3. By March 1, 2012 Jeffrey Gerritson shall pay a penalty in the amount of \$2,000.

4. In the event that a third-party dumps discarded appliances on the property of Jeffrey Gerritson, he shall immediately notify the DNR and shall also immediately contact a permitted appliance demanufacturer for the removal of the appliances. Mr. Gerritson is free

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to take such additional actions as he believes are appropriate, such as filing a complaint with law enforcement officials or taking private legal action against any illegal dumper.

5. If Jeffrey Gerritson voluntarily accepts discarded appliances without first obtaining an appliance demanufacturing permit, he shall be subject to a stipulated penalty in the amount of \$100 per appliance accepted. The stipulated penalties shall be paid in full within 30 days after written notice from the DNR. The failure to comply with the notification provisions set forth in paragraph #4 shall raise a rebuttable presumption that the appliances were voluntarily accepted.

VI. PENALTY

1. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with an administrative penalty of \$2,000. The administrative penalty is determined as follows:

I. Economic Benefit. Jeffrey Gerritson has achieved an economic benefit by failing to comply with discarded appliance demanufacturing and solid waste requirements. Jeffrey Gerritson has achieved an economic benefit by failing to comply with discarded appliance demanufacturing requirements. Costs avoided include hazardous waste disposal costs and labor costs. Economic benefits were achieved through the sale of discarded appliances for scrap metal. Costs avoided by the failure to obtain an appliance demanufacturing permit include the cost of the permit training course, engineer assessment, and obtaining a bond or letter of credit. Based upon these considerations, a penalty of \$500 is assessed for this factor.

II. Gravity of the Violations. Failure to properly dispose of solid waste threatens the integrity of the solid waste program and the successful administration of Chapter 567 IAC 118. Discarded appliances contain hazardous wastes including PCBs, mercury, and refrigerants. The improper handling, storage, and disposal of discarded appliances threaten the release of hazardous wastes into the atmosphere and the safety of Iowa citizens. This open dumping violation is a repeated action from previous open dumping and a related site cleanup from July 2007. These violations also encourage consumers, appliance salesmen and others, to not pay the proper disposal fees for discarded appliances as charged by an appliance demanufacturing permit holder. Based upon these considerations, a penalty of \$1,000 is assessed for this factor.

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III. Culpability. Mr. Gerritson is an active scrapper and has knowledge that appliances are to be demanufactured by a licensed appliance demanufacturer. He has been previously notified that the unpermitted collecting, storing, handling, and accumulating of appliances on his property violates the Iowa open dumping statute. Despite this, Mr. Gerritson has continued to violate the laws and rules governing discarded appliances. Based upon these considerations, a penalty of \$500 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.308 and 561 IAC 7.4(1), as adopted by reference at 567 IAC 7.1, a written Notice of Appeal to the Commission may be filed within 30 days of issuance of this administrative order. The Notice of Appeal should be filed with the Director of the DNR, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal.

VIII. NONCOMPLIANCE

Compliance with sections V 1-V 4 of Section "V. Order" of this administrative order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative order. Failure to comply with this administrative order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.307. The DNR reserves the right to issue another order or to refer to the attorney general in lieu of collecting stipulated penalties pursuant to this administrative order.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 9th day of
January, 2012.

Field Office 3; Bryon Whiting; VIC